

RicohPOR (Perkins Coie)

From: Feldman, Stephen (Perkins Coie)
Sent: Friday, February 14, 2014 9:51 AM
To: Will@farlawfirm.com
Subject: Queen Ave.
Attachments: Assets Version - Settlement and Mutual Release of Claims for Queen Ave Site.docx

Will, this incorporates the phrase "construction-related" in paragraph 2 as we discussed.

I also added the WasteXpress figure in paragraph 12, but put in redline a proposal to deal with the potential interest issue if closing does not occur today as planned. Please confirm that this is acceptable.

Finally, I changed the Effective Date to today's date, as you will see.

Please get back to me as soon as you can. I know you have a hearing until 11.

I am working on the escrow agreement.

Thanks,
Stephen

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

DATE: February 1~~4~~³, 2014 ("Effective Date")

THE PARTIES

This Settlement Agreement and Mutual Release of All Claims ("Agreement") is executed by and among River City Environmental, Inc. ("River City"), on the one hand, and David Ellis, Pamela Ellis, and Farouk Al-Hadi (collectively "Owners"), on the other hand.

RECITALS

1. Owners are the owners of the real property located at 140 Queen Ave. SW, Albany, OR 97322 ("Property"), as legally described in the Claim of Construction Lien dated January 9, 2014, and recorded January 10, 2014, as Document No. 2014-00290, in the Office of the County Recorder of Linn County, Oregon ("Lien 1").
2. The United States Environmental Protection Agency required Owners to perform certain construction-related environmental remediation activities on the Property and Owners hired River City to perform those activities, and the activities were performed between on or about October 13, 2013 and on or about December 30, 2013 ("Project 1"). The Invoice for this project ("Invoice 1") is included in "Lien 1."
3. Owners hired River City to perform certain additional remediation work on the Property, and that work was performed between on or about December 11, 2013 and January 8, 2014 ("Project 2"). The Invoice for this project ("Invoice 2") is included in the Claim of Construction Lien dated January 29, 2014, and recorded January 29, 2014, as Document No. 2014-01024, in the Office of the County Recorder of Linn County, Oregon ("Lien 2").
4. Invoice 1 is for \$368,869.76.
5. Invoice 2 is for \$121,252.80.
6. River City completed Project 1 and Project 2 to the satisfaction of Owners.
7. River City recorded Lien 1 and Lien 2 against the Property on January 10, 2014 and January 29, 2014, respectively.
8. On or about February 3, 2014, Owners paid \$91,992.15 to River City for Project 2. This payment shall be credited against Lien 2. As of the Effective Date of this Agreement, Owners have made no other payments on either Project 1 or Project 2.
9. Owners intend to sell the Property to Pacific Cast Technologies, Inc. ("Buyer"). The closing of this anticipated sale of the Property shall be referred to hereinafter as the "Closing."
10. Owners will obtain title to the assets shown in Addendum A (collectively "Transferred Assets") upon the final approval of a settlement agreement outlined in Document 378 of the bankruptcy proceeding In re Absorbent Technologies, Inc., in the United States Bankruptcy Court in the District of Oregon, Case No. 13-31286-tmb7.

AGREEMENT

11. The Recitals above are incorporated into this Agreement and made a part hereof as if separately stated herein.
12. Owners will instruct Chicago Title Company, in its capacity as escrow agent in connection with the anticipated sale of the Property ("Escrow Agent"), to set aside \$225,000 from the proceeds of the sale of the Property to Buyer. Escrow Agent will be instructed that of this \$225,000, \$85,715 (plus \$38.23 per day for each day after the Effective Date of this Agreement) will be paid at the time of Closing to one of River City's subcontractors that does business under the name of WasteXpress, while the remaining sum of \$139,285 (less \$38.23 per day for each day after the Effective Date of this Agreement) will be paid at the time of Closing to River City. It is agreed that these combined payments of \$225,000 shall fully satisfy Lien 1.
13. Upon Owners obtaining title to the Transferred Assets, Owners will execute appropriate documentation to transfer such title to River City within five (5) business days, with such transfer of title fully satisfying Lien 2.
14. By no later than 1:00 p.m. on February 14, 2014, River City will deposit executed releases of Lien 1 and Lien 2 with Escrow Agent and will instruct Escrow Agent to record the releases of Lien 1 and Lien 2, at the expense of Owners, as soon as Escrow Agent has made the combined payments of \$225,000 as set forth in paragraph 12 above. If Escrow Agent does not make the combined payments of \$225,000 by February 28, 2014, then River City will withdraw the lien releases from escrow.
15. Owners and River City will jointly instruct Escrow Agent to hold back \$150,000 from the proceeds of the sale of the Property to Buyer and keep this amount in escrow. Owners and River City will jointly instruct Escrow Agent to: (i) deliver the \$150,000 to Owners upon written notice to Escrow Agent that Owners have transferred their title to the Transferred Assets to River City; or, alternatively, (ii) deliver the \$150,000 to River City upon written notice to Escrow Agent that the settlement agreement referenced in paragraph 10 above was not finally approved.
16. River City shall remove (including any necessary disconnection or disassembly), at the expense of River City, all Transferred Assets from the Property by no later than 45 days after the Effective Date of this Agreement ("Removal Period"). Owners shall provide River City with access to the Property at all hours during the Removal Period. The parties recognize and agree that time is of the essence with regard to the removal of the Transferred Assets, and that Owners could sustain serious economic injury if all of the Transferred Assets are not timely removed from the Property within the Removal Period. River City agrees to exercise due care during its removal of the Transferred Assets from the Property. River City also agrees to accept the Transferred Assets in their condition as-is, and without any warranty or representation by Owners as to the quality of the Transferred Assets or their fitness for any particular purpose.
17. River City shall store and maintain the Transferred Assets, at the expense of River City, until such time as the \$150,000 referenced above in paragraph 15 is either delivered to Owners or to River City. In the event that the \$150,000 is delivered to Owners, then River City is free to use or dispose of the Transferred Assets as it deems fit. Alternatively, in the event that the \$150,000 is

delivered to River City, then River City shall continue to store and maintain the Transferred Assets, at its expense, for an additional 14 days, by which time Owners shall, at the expense of Owners, pick up and re-take possession of the Transferred Assets.

18. As of the Effective Date of this Agreement, Owners, on behalf of themselves and each of their respective past and present agents, partners, spouses, offspring, attorneys, alter egos, joint venturers, predecessors, successors, licensees, representatives, assigns, transferees, beneficiaries, heirs, and all other persons or entities acting on their respective behalves, forever discharge and release River City, and each of its past and present officers, directors, shareholders, employees, servants, agents, partners, members, attorneys, subsidiaries, affiliates, divisions, alter egos, parent corporations, joint venturers, predecessors, successors, licensees, representatives, assigns, trustees, transferees, beneficiaries, administrators, and all other persons or entities acting on its behalf (collectively "Parties Released by Owners"), from any and all actions, claims, debts, costs, expenses, damages, injuries, liabilities, demands, and causes of action at law or in equity of any kind, nature, and description, whether known or unknown, suspected or unsuspected, fixed or contingent, asserted or unasserted ("Claims of Owners"), that Owners have or may have against the Parties Released by Owners, or any of them, arising before, on, or after the Effective Date which arise out of or relate to Project 1, Project 2, Lien 1, Lien 2, or any oral agreements relating thereto. Owners represent, warrant, and agree that they are the sole owners of the Claims of Owners and that they have not transferred or assigned, and will not transfer or assign to any other person or entity, any of the Claims of Owners released by them herein, and that any such transfer or assignment shall be null and void, and Owners further agree to indemnify, defend, and hold the Parties Released by Owners harmless from and against any and all claims, actions, causes of action, demands, and liabilities based upon or arising out of any such assignment or transfer, or purported assignment or transfer.
19. As of the Effective Date of this Agreement, River City, on behalf of itself and each of its past and present shareholders, principals, members, directors, officers, employees, agents, partners, attorneys, insurers, parent corporations, subsidiaries, affiliates, divisions, alter egos, joint venturers, predecessors, successors, licensees, representatives, assigns, trustees, transferees, beneficiaries, administrators, and all other persons or entities acting on their respective behalves, forever discharge and release Owners, and each of their respective past and present agents, partners, spouses, offspring, attorneys, alter egos, joint venturers, predecessors, successors, licensees, representatives, assigns, transferees, beneficiaries, heirs, and all other persons or entities acting on their respective behalves (collectively "Parties Released by River City"), from any and all actions, claims, debts, costs, expenses, damages, injuries, liabilities, demands, and causes of action at law or in equity of any kind, nature, and description, whether known or unknown, suspected or unsuspected, fixed or contingent, asserted or unasserted ("Claims of River City"), that River City has or may have against the Parties Released by River City, or any of them, arising before, on, or after the Effective Date which arise out of or relate to Project 1, Project 2, Lien 1, Lien 2, or any oral agreements relating thereto. River City represents, warrants, and agrees that it is the sole owner of the Claims of River City and that it has not transferred or assigned, and will not transfer or assign to any other person or entity, any

of the Claims of River City released by it herein, and that any such transfer or assignment shall be null and void, and River City further agrees to indemnify, defend, and hold the Parties Released by River City harmless from and against any and all claims, actions, causes of action, demands, and liabilities based upon or arising out of any such assignment or transfer, or purported assignment or transfer.

20. Owners agree to defend, indemnify and hold harmless the Parties Released by Owners from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or in connection with claims by any person or entity that such person or entity holds an interest in, or lien against, any of the Transferred Assets.
21. The Parties represent that they fully understand the terms of this Agreement, that they have carefully read this Agreement, that they are represented by legal counsel or have had the opportunity to consult with legal counsel, and that they voluntarily agree to the terms set forth herein as a complete settlement of any and all claims that Owners and River City may have against each other as set forth herein. This Agreement extends to all agents, principals, and subcontractors connected with the parties, as well as to any and all successors and assigns.
22. This Agreement contains the entire agreement between the parties, and its terms are contractual, not merely recitals. This Agreement supersedes all previous agreements between the parties, whether oral or written. This Agreement may not be amended except in writing executed by each of the parties hereto.
23. This Agreement may be executed by the parties in counterparts, if necessary, and still be fully binding. An electronic copy of a party's signature is valid and binding to the same extent as an original signature.
24. Any provision of this Agreement that is deemed invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability and shall be severed from the remaining provisions hereof without rendering invalid or unenforceable the remaining provisions of this Agreement.
25. Should any of the parties successfully prosecute or defend any action, claim for relief, or other proceeding by or against any other party to this Agreement relating to any of the rights, duties, or obligations arising under this Agreement, that prevailing party shall be entitled to recover the reasonable value of its attorneys' fees, expert witness fees, costs, disbursements and other expenses, including, without limitation, such fees and costs arising before and at any trial, as well as on appeal.
26. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.
27. Each of the parties to this Agreement hereby represents, warrants, and covenants that he or she has the full power and authority to execute, deliver, and perform this Agreement and has duly authorized the execution, delivery, and performance of this Agreement. Each of the undersigned agents of the parties hereto hereby represents and warrants his or her authority to sign this Agreement for such party.

[Signatures begin on the following page.]

The undersigned hereby agree to the terms of this Agreement as of the Effective Date set forth above.

River City Environmental, Inc.

By: _____
Steve McInnis, President

David Ellis

Pamela Ellis

Farouk Al-Hadi